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**Datasheet for the decision  
of 9 September 2021**

**Case Number:** T 2370/18 - 3.2.03

**Application Number:** 10732359.4

**Publication Number:** 2454537

**IPC:** F25B39/04, F28F1/16, F28F7/02

**Language of the proceedings:** EN

**Title of invention:**  
RADIATION HEATING APPARATUS

**Patent Proprietor:**  
Termal SRL

**Opponent:**  
DAIKIN AIR CONDITIONING ITALY S.p.A

**Headword:**

**Relevant legal provisions:**  
EPC R. 84(1), 100(1)

**Keyword:**  
Lapse of patent in all designated states - termination of  
appeal proceedings

**Decisions cited:**

T 2365/17, T 0708/01

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: T 2370/18 - 3.2.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.03**  
**of 9 September 2021**

**Appellant:** Termal SRL  
(Patent Proprietor) Via Della Salute 14  
40132 Bologna (IT)

**Representative:** Karaghiosoff, Giorgio Alessandro  
c/o Praxi Intellectual Property S.p.A. - Savona  
Via F. Baracca 1R, 4° piano  
"Il Gabbiano"  
17100 Savona (IT)

**Respondent:** DAIKIN AIR CONDITIONING ITALY S.p.A  
(Opponent) Via Milano 6  
20097 San Donato Milanese (MI) (IT)

**Representative:** Di Bernardo, Antonio  
Thinx S.r.l.  
P.le Luigi Cadorna, 10  
20123 Milano (IT)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 12 July 2018  
revoking European patent No. 2454537 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman** C. Herberhold  
**Members:** R. Baltanás y Jorge  
N. Obrovski

## **Summary of Facts and Submissions**

- I. The present appeal lies from the decision of the opposition division dated 12 July 2018 revoking European patent EP-B-2 454 537.
- II. This decision was appealed by the patent proprietor (in the following: the appellant).
- III. The Board informed the patent proprietor as the only appellant in this case with letter of 25 May 2021 that, according to the information in the European Patent Register and in the register of the "Deutsches Patent und Markenamt (DPMA)", the European patent had lapsed in all designated contracting states.

The appellant was asked to state within two months from notification of the Board's communication if they requested that the appeal proceedings be continued. Furthermore, the appellant was informed that, in the absence of such a request, the appeal proceedings would be terminated without a decision on the merits of the case.

- IV. No reply of the appellant has been received within the prescribed time limit.

## **Reasons for the Decision**

1. If a European patent has lapsed in all designated contracting states, opposition proceedings may be continued at the request of the opponent (Rule 84(1))

EPC). According to Rule 100(1) EPC, this also applies in appeal proceedings following opposition proceedings.

However, if - as in the present case - the patent proprietor is the only appellant, it would be inappropriate to allow the opponent (respondent) to decide whether the appeal proceedings shall be continued.

For this reason, Rule 84(1) EPC is applied *mutatis mutandis* in such opposition appeal proceedings, so that it is the patent proprietor who can request that the appeal proceedings be continued (T 2365/17, point 2 of the Reasons; T 708/01, point 1 of the Reasons; see also Case Law of the Boards of Appeal of the EPO, 9th edition, 2019, III.Q.1.2.2).

2. However, the appellant has not filed any request to continue the appeal proceedings within the time limit set in the communication dealing with the lapse of the European patent. The Board does not see any reason to continue the proceedings.
3. In view of the above, the appeal proceedings are to be terminated without a decision on the merits of the case.

**Order**

**For these reasons it is decided that:**

The appeal proceedings are terminated.

The Registrar:

The Chairman:



C. Spira

C. Herberhold

Decision electronically authenticated